2018 ICI CONFERENCE

ICI MUTUAL FUNDS AND INVESTMENT MANAGEMENT **CONFERENCE SUMMARY**

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2018 ICI MUTUAL FUNDS AND INVESTMENT MANAGEMENT CONFERENCE

March 19–21, 2018 | *San Antonio, Texas*

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GENERAL COUNSEL'S ADDRESS

Speaker: Susan M. Olson, General Counsel, Investment Company Institute

Ms. Olson addressed four potential opportunities that may arise for the industry: (i) the establishment of a robust best-interest standard of conduct for broker-dealers who provide recommendations to retail investors; (ii) the streamlining of the exchange-traded fund (ETF) approval and listing process; (iii) the modernization of fund board responsibilities; and (iv) the modernization of delivery and content of fund shareholder reports.

Best-Interest Standard for Broker-Dealers. Ms. Olson remarked that the prospects for a robust best-interest standard of conduct for broker-dealers providing recommendations to retail investors previously looked bleak, but that there may still be time to get the standard right. She stated that the new leadership of the Department of Labor (DOL) has delayed some of the most harmful provisions of the DOL's conflict of interest rule and related exemptions (collectively, the fiduciary rule) and that the DOL is now coordinating with the Securities and Exchange Commission (SEC) on the development of a new rule. Ms. Olson also stated that the ruling by the Court of Appeals for the Fifth Circuit vacating the fiduciary rule makes it even more imperative that the SEC act promptly. She stated that the ICI believes that the SEC should establish and enforce a new best-interest standard of conduct for broker-dealers that applies consistently across retirement and non-retirement accounts and that it should coordinate with the DOL in doing so. In the event that the SEC adopts such a standard, she urged the DOL to recognize and acknowledge the SEC standard and adopt a streamlined exemption covering intermediaries that are subject to it.

ETF Rule. Ms. Olson then commented on the potential opportunity regarding streamlining the ETF approval and listing process. She remarked about the importance of reform in this area in light of the rising demand for ETFs. She stated that the ICI is urging the SEC to propose a rule that lays out the conditions for most new ETFs to operate without obtaining an exemptive order. She said that such a rule would enable ETF sponsors to bring most ETFs to market more quickly and at lower cost, would help level the playing field among ETF sponsors, and would free the SEC staff to focus on exemptive relief for more novel ETFs. She stated that the ICI is also urging the SEC to consider ways that the Division of Investment Management and the Division of Trading and Markets can establish a single approval and listing process for ETFs to eliminate the possibility of conflicting requirements and generally simplify the ETF launch process.

Modernizing Fund Board Responsibilities. Ms. Olson then described modernizing fund board responsibilities. She commented that an update to responsibilities of fund boards is "long overdue" and that many of the responsibilities "have become counterproductive, out of date, or out of sync with directors' proper oversight role" of promoting and protecting shareholders' interests. She stated that the Independent Directors Council has asked the Division of Investment Management to review board responsibilities that have accumulated over time and has outlined areas in need of reform.

Modernizing Delivery and Content of Fund Shareholder Reports. Ms. Olson then described modernizing the delivery and content of fund shareholder reports. She described the "paper-dependent, snail-mail framework for delivering shareholder re-

ports" as "[a]ntiquated, wasteful, and expensive." She stated that the ICI and its members have been fighting efforts of special interest groups to use government spending bills to block the SEC from adopting proposed Rule 30e-3 under the Investment Company Act of 1940 (1940 Act), which would permit funds to mail shareholders a paper notice telling them how to access their reports online or request a hard copy by mail. Ms. Olson urged the SEC to adopt the rule promptly.

Ms. Olson acknowledged that this list of opportunities is ambitious, but stated that the ICI sees reasons to be confident that the changes will be made. She cited the SEC's Fall 2017 regulatory agenda (Reg Flex agenda), which outlines near-term plans to work on a best-interest standard, an ETF rule and the shareholder report delivery rule; the Division of Investment Management's initiatives regarding reviewing and reevaluating fund board responsibilities and improving fund investor experience and fund disclosure; and the fact that there are now five Commissioners.

KEYNOTE REMARKS

A Discussion with Dalia Blass

Speaker: Dalia Blass, Director, Division of Investment Management, US Securities and Exchange Commission

Ms. Blass addressed the following topics in her speech: the role of data in the work of the Division of Investment Management (Division), the Division's perspective on the role of fund directors, the potential for an ETF rule and the role of index providers.

Information and Analysis. Ms. Blass described the Analytics Office of the Division and stated that the office has enhanced the Division's ability to comprehend and utilize data. She discussed the Division's internal Monitoring and Analytics GUI (Graphical User Interface) for Investment Companies (MAGIC) tool. She stated that MAGIC allows the Division to compile different data sets, including information about performance, flow, and holdings, to look at the data holistically and to ask and answer specific questions about registrants. As an example, she described how MAGIC allows the Division to identify which funds may have exposure to certain assets such as cryptocurrencies. She also stated that MAGIC has been most useful in improving the disclosure review process and that, using MAGIC, reviewers can enter a ticker symbol and see key aspects of a fund's investment program, such as performance and strategy. She stated that MAGIC will help the Division implement a risk-based approach to reviewing disclosure, which will improve the effectiveness and efficiency of the disclosure review process. Ms. Blass then described how MAGIC will also be able to incorporate new data as it comes available, such as information filed with new Form N-PORT.

Update on the Fund Board Outreach Initiative. Ms. Blass then discussed the fund board outreach initiative and stated that she believes "fund boards serve investors best when they focus on areas where their judgment and experience uniquely equip them to provide oversight," and that the goal of the initiative is to understand where board oversight is most valuable. She stated that over the last few months, the Division staff has been meeting with fund boards, groups of independent directors, counsel to independent directors, counsel to funds and independent auditors. She stated that the directors they have spoken with emphasized the importance of respecting the line between oversight and management. She described how this concern has arisen in the context of valuation and review of affiliated transac-

tions, and reported that the Division has prioritized these areas for consideration. She stated that the Division staff is in the early stages of considering options for updating its valuation guidance to reflect evolution in the markets and the standards for accounting, auditing and reporting. Regarding affiliated transactions, she stated that the Division's review is both "backward and forward looking." Ms. Blass then remarked that the Division will continue to seek the insight of boards and other stakeholders regarding this initiative.

ETFs. Regarding ETFs, Ms. Blass stated that recommending an ETF rule to the Commission is a "high priority" for the Division. In addition, she stated that she would welcome thoughts from investors, funds and advisers on whether it would be helpful to investors and the markets for the SEC to address the nomenclature surrounding exchange-traded products (ETPs), which include ETFs, commodity pools, and exchange-traded notes (ETNs). In response to a question, she indicated that the ETF rule is on the agenda for the SEC's current fiscal year, which means prior to September 30, 2018.

Index Providers. Ms. Blass then welcomed thoughts from the industry on whether the Division should revisit the status of certain index providers as investment advisers. She stated that, under the Investment Advisers Act of 1940, index providers have historically concluded that they may rely on the "publisher's exclusion" from the definition of investment adviser. She observed, however, that recent developments have moved certain index providers away from what we might think of as publishers. She stated that these index providers are not providers of broad-based indexes, but instead are providers maintaining an index for only one or a limited number of funds, may be an affiliate of the fund's sponsor and/or may be taking significant input from a fund's sponsor. She stated, "For the practitioners in the audience, I encourage you to refresh your analysis if you are looking at a bespoke or narrowly focused index." Ms. Blass then stated that there were also questions regarding disclosure and whether, if a fund is tracking a bespoke or narrowly focused index, the fund's disclosure is clearly describing its strategy to investors.

GENERAL SESSION

Paradigm Shift: Product and Distribution Trends Shaping Today's Asset Management Industry

Moderator: Michelle Rosenberg, Senior Vice President Head of Legal, North America, Janus Henderson Investors

Speakers: T. Neil Bathon, Managing Partner, FUSE Research Network LLC

Jane Carten, President, Saturna Capital Corporation

James G. Whetzel, Vice President and Senior Strategy Officer, Financial Advice and Solutions Group, USAA

This panel discussed current trends in product development and distribution, including the shift from active to passive products, product line rationalization, product selection, margin pressure and business optimization, demographic shifts, regulatory changes, and key takeaways.

Shift from Active to Passive. Mr. Bathon provided an overview of (i) asset growth and net sales trends for active, passive, and strategic beta products over the past five years and (ii) trends in mutual fund and ETF launches and rationalizations over the past two years. He noted that, while active managers have seen material net outflows, gross sales across the active market remain strong and outflows are beginning to slow. He stated his view that the market for strategic beta is saturated and there is more delinea-

tion in strategic beta products than the market can handle. He stated that he also expects increasing rationalization of ETFs due to over-delineation of existing offerings. Mr. Bathon confirmed that lower fees are the primary driver of the trend toward passive products and remarked on the resulting fee pressure on fixed income and other types of active strategies.

Product Line Rationalization. Mr. Whetzel stated that, as new product types gain traction in the market, firms should develop processes to evaluate and rationalize existing offerings through consideration of factors such as value, scale, diversification, and implications of product choice. He noted that if a sponsor does not have a clear vision of how to distribute a fund and grow its assets, the fund will not survive. He stressed the importance of considering how a new product might impact a firm's existing offerings.

In discussing specific trends in product development, Ms. Carten emphasized the importance of stripped-down share classes (i.e., clean shares) with more transparent fees. Mr. Whetzel noted his belief that a trend toward share classes for which the distributor is not paid at all (i.e., purely clean shares) is unlikely because there are important services that need to be provided to shareholders that will not be provided without compensation.

Ms. Rosenberg noted recent market interest in fulcrum fees. Ms. Carten commented that, while she believes fulcrum fees are the best way to align the economics of an investment adviser with client needs and objectives, she does not expect a meaningful trend toward fulcrum fee products in the short term due to certain practical obstacles such as the difficulty in explaining the fee structure to clients and the possibility that the funds would be screened out of distribution opportunities during periods of over-performance due to relatively high expense ratios. Mr. Bathon further noted that the lag between a performance shift and the resulting fee adjustment could result in investors exiting the fund after a period of poor performance without benefitting from the corresponding fee reduction.

Product Selection. Mr. Bathon noted the shift in product selection decision-makers from advisers to professional buyers. He commented on the effect this trend has had on advisers, who have had to reevaluate fees and services. He noted that, as the value provided by advisers with respect to product selection has declined, advisers generally have decreased fees and focused more on other services offered (e.g., asset allocation, investment advice, financial planning).

Margin Pressure and Business Optimization. The panelists discussed margin pressure and various inefficiencies in the market. Ms. Carten commented on strategies for reaching retail customers, including the use of technology (e.g., self-directed online tools) and thinking outside the box on distribution. She noted that certain specialized products, such as ESG funds, may get lost on large distribution channels, necessitating creative approaches to marketing and distribution (e.g., teaming with sponsors of similar products for coordinated customer outreach through conferences and other events). In discussing business optimization, Mr. Bathon expressed his view that mid-sized advisory firms without a clear niche in the market are most at risk for consolidation. He also noted that the role of wholesalers may diminish as advisory firm marketing departments play a larger part in product customization and customer education.

Demographic Shifts. Ms. Rosenberg stated that fund firms' responses to evolving demographic shifts has led to differentiation of products and targeted outreach strategies. She noted that firms have had to focus on providing value to baby boomers as

they enter retirement while meeting the needs of millennial investors. Mr. Bathon stated that, despite common beliefs about millennials, from a product distribution perspective, they are not very different from other generational cohorts. He reported that research shows that, once they get married and enter the workforce, millennials display economic behavior similar to other generational populations. Mr. Whetzel stated that, based on his experience, the ability of customers to act via electronic channels is not generation-based, and Mr. Bathon confirmed that millennials are not trending toward robo-advisers. Ms. Rosenberg commented on women's increasing use of wealth management services, interest in purpose investing, and focus on wealth transfer.

Regulatory Changes. Mr. Whetzel noted that the asset management industry has been in a decade-long period of disruption, which he believes is coming to an end in light of the collaborative regulatory environment that Ms. Blass described in her speech earlier in the day. Regarding the DOL rule, Ms. Rosenberg stated that, regardless of what ultimately happens with the rule, there has been movement in the industry that will be hard to pull back. Ms. Carten agreed that firms have taken steps to provide a greater level of transparency for investors and that trend will not likely be reversed.

Key Takeaways. The panelists closed the discussion by asking what fund firms could do to successfully capitalize on industry trends. Mr. Whetzel believes that an understanding of the firm's customers and how they can be served in the distribution network should be a key priority. He also noted the importance of understanding the mechanics of distribution (e.g., how funds are paying for the services they receive) to avoid distribution-in-guise issues. Ms. Carten commented on the importance of getting to know distribution channels, in addition to understanding investor demand, to ensure that platforms have a need for a firm's products. Ms. Rosenberg commented on the importance of client focus with a view toward understanding each phase of the client's investment experience. Mr. Bathon recommended that firms spend time considering, and scoping out a plan for, the pressures that their businesses will face going forward.

SESSION A

What Is the Future of UCITS Post-Brexit?

Moderator: Eva Mykolenko, Associate Chief Counsel, Securities Regulation, ICI Global

Speakers: Gregory P. Dulski, Senior Corporate Counsel, Federated Investors, Inc.

Monica Gogna, Partner, Dechert LLP

Andrew O'Callaghan, Asset and Wealth Management Leader—Europe, Middle East, and Africa, PricewaterhouseCoopers

Denise Voss, Conducting Officer, Franklin Templeton Investments, Luxembourg and Chairman, Association of the Luxembourg Fund Industry (ALFI)

This panel addressed recent developments affecting investment funds that are regulated under the UCITS regime, the potential consequences of Brexit for UCITS managers, and important topics for the future of the UCITS industry.

Context for UCITS Regime. Mr. O'Callaghan introduced the history and current state of UCITS funds, which began in 1985 as a European cross-border open-end fund offering regime. He stated that currently UCITS funds constitute 23% of the approximately USD 47 trillion global market of regulated open-end funds, US mutual funds account for 45%, and other non-US/non-UCITS funds make up the remaining 32%. UCITS funds are offered worldwide, he

continued, and the three most popular domiciles for UCITS funds, by asset level, are Luxembourg (EUR 3.4 trillion), Ireland (EUR 1.7 trillion) and the UK (EUR 1.2 trillion). Approximately 48% of UCITS shares outstanding are denominated in currencies other than the euro.

UCITS Regulation in Luxembourg and Ireland. Ms. Voss then provided perspective on the implementation and growth of the UCITS regime in Luxembourg. She observed that Luxembourg had been a first mover in developing a robust regulatory framework, with government support for the establishment of infrastructure to attract UCITS sponsors. She stated that investor protections such as diversification, risk management and custody requirements improved the likelihood that non-European Union regulators would permit the offering of UCITS products to retail investors in their home jurisdictions. She observed that, in addition to a regulatory framework and infrastructure, operational innovations such as the "umbrella fund" structure and the ability to offer share classes denominated in different currencies have augmented the popularity of UCITS products with investors.

Mr. Dulski then described the Irish Central Bank and the Irish Department of Finance and stated that they were very transparent and accessible regulators that allow the industry to participate constructively in rulemaking. He noted that the Irish regulatory regime purposefully targeted US managers seeking to expand their fund distribution efforts into Europe, building on the advantage of being an English-speaking country. Pointing to the high degree of support given by the Irish government in developing a vibrant funds industry, he noted both a healthy competition and a degree of cooperation between Ireland's and Luxembourg's governments on UCITS matters.

Brexit and Its Consequences. Ms. Gogna then outlined the timeline and potential impact of Brexit, which began with a June 2016 popular vote in the UK, followed by a triggering of the Article 50 exit process in March 2017. She announced that, earlier that day, the UK and the European Union (EU) had agreed to an additional transition period through 2020, subject to certain conditions. The panel agreed that the news of the extension is positive and supports additional optimism that the UK and the EU will be able to work out the more problematic issues surrounding implementation of Brexit. Ms. Gogna observed that significant uncertainty remains, and she outlined three broad scenarios: (i) the UK reverses course and stays in the EU; (ii) no comprehensive agreement is struck in time, creating a "hard Brexit" in which the UK is treated as a "third country"; and (iii) a pragmatic agreement is reached between the EU and the UK for post-Brexit relations. Mr. O'Callaghan recommended that firms consider the impact of Brexit on (a) the products they sell and where they sell them; and (b) the people, operations and tax aspects of their businesses that touch the UK and the EU. Ms. Voss observed that the UCITS regime itself was not likely to be as dramatically affected by Brexit as would other types of products and vehicles because so much of the UCITS framework is focused in Luxembourg and Ireland, which are remaining in the EU. Ms. Gogna pointed out that, while the structure of UCITS vehicles might not be as impacted by Brexit, the "ecosystem" in which UCITS funds are managed and sold could be significantly altered.

Recent Issues Surrounding Delegation under UCITS. The panel discussed the repercussions of a series of opinions issued by the European Securities and Markets Authority (ESMA) in mid-2017 addressed to the local country regulators in EU member states (referred to as National Competent Authorities or

NCAs) asking for a thorough review of the appropriateness of fund firms' use of "delegation" arrangements following Brexit, with a special focus on promoting substance over form and the avoidance of "letterbox" entities (entities that are nominally based in a jurisdiction for regulatory or tax reasons but are operationally run elsewhere). While these topics arise in the context of Brexit, the panelists emphasized that US and other non-EU managers currently make extensive use of delegation arrangements to offer their clients the option of investing in UCITS products. Commentators have argued that targeting delegation arrangements by European regulators would tend to disadvantage the UK and specifically London, where a disproportionate number of portfolio managers operate as the recipients of delegation, and would create incentives for firms to relocate investment professionals to EU member states post-Brexit.

Review of European Supervisory Authorities (ESAs) and Future of EU Regulation. Mr. Dulski then led a discussion of a formal review process announced in September 2017 that could significantly change the balance between ESAs (which include ESMA) and NCAs. Describing the dynamic between ESMA and NCAs as being at a crossroads, Mr. Dulski stated that the current review could significantly increase ESMA's supervisory authority, allowing it to take over certain roles currently performed by NCAs and giving it an ability to "intervene decisively" in disputes between NCAs. Mr. O'Callaghan commented on the political aspects of the review of ESAs, with ESMA headquartered in Paris and dominated by French personnel, and compared the tension to other French-driven proposals to centralize oversight across Europe. The panel agreed that the "French view" on a number of issues may differ significantly from the majority view across the EU member states.

Developing Topics. The main portion of the session concluded with an opportunity for panel members to comment on developing topics of their choice. Ms. Gogna discussed the continued expansion of ETFs under UCITS, noting that this product structure has been making progress toward a level playing field with open-end funds and toward expanding its distribution in the EU. Mr. O'Callaghan predicted that active ETFs would be expanding, and Ms. Gogna observed that, although the EU ETF industry was growing in the wake of the industry's development in the US, it was developing in its own distinctive way. Mr. O'Callaghan noted that technology can be a "game changer," as both an enabler and disruptor. He stated that technology is especially critical for distribution of UCITS funds in multiple markets, especially in Asia. The panel members commented on the impact of technology in reducing costs, as well as the developing use of blockchain technology, robots, and artificial intelligence. Ms. Voss commented on the rise of alternative investing, pointing out the similarities between the separate regimes of UCITS and the Alternative Investment Fund Managers Directive (AIFMD), as many managers with institutional client bases are now managing both UCITS and AIFMD vehicles.

SESSION B

ESG Program Implementation: What You Need to Know

Moderator: Linda M. French, Assistant General Counsel, Securities Regulation, Investment Company Institute

Speakers: Megan Claucherty, Senior Counsel, Harris Associates L.P.

Judy Cotte, Vice President and Head, Corporate Governance and Responsible Investment, RBC Global Asset Management, Inc.

Joshua A. Weinberg, Managing Director and Managing Counsel, State Street Global Advisors

This panel discussed incorporating environmental, social and governance (ESG) or "sustainable" factors into the investment process.

ESG Investing. Ms. Cotte said that RBC Global Asset Management, Inc. (RBC) had concluded, based on its own research, that companies with strong ESG profiles are likely to outperform. Because of this, she said, RBC required its investment teams to consider ESG factors in their investment processes. She said that RBC does not prescribe any particular method for considering ESG factors, and that there are differing approaches across teams. She said that ESG factors are also an important part of her firm's proxy voting process and active issuer engagement. Ms. Cotte then distinguished RBC's ESG approach from socially responsible investing (SRI), which she defined as screening out companies or industries from portfolios based on value judgments. Ms. Claucherty said that Harris Associates L.P. (Harris) does not use ESG factors to screen out investments, but used them as additional data points in the investment process.

Mr. Weinberg described the ESG landscape, observing that ESG investing could be implemented through (i) exclusionary screens (screening out); (ii) positive screens (screening in); (iii) integrating ESG factors into the investment process; (iv) impact investing (investing for an outcome); and (v) active ownership (engaging with portfolio companies to address ESG factors). He said that active ownership – engaging with companies' boards of directors and management teams, and using the proxy voting process to influence change – is particularly important to State Street Global Advisors (SSGA) because, when acting as an index investor, SSGA is unable to actively divest of companies with poor ESG profiles.

Ms. Cotte said that, while different investment teams at RBC incorporated ESG factors into their investment process in different ways, proxy voting is centralized. She said that RBC actively engages with issuers regarding relevant ESG issues, and that portfolio managers are included in that process.

Ms. Claucherty said that Harris uses ESG data from a vendor to supplement its own research. She said that portfolio managers are required to document how they use ESG data in their investment process. Ms. Cotte said that RBC also uses vendor data. She noted that considering ESG factors in the investment process requires a lot of judgment and a long-term view. She observed that the ESG data itself tends to incorporate judgment, and that portfolio managers need to rely on their own judgment in evaluating vendor data.

Mr. Weinberg described SSGA's development of the SSGA Gender Diversity Index, an index based on the idea that gender diversity on companies' boards of directors and in senior leadership positions correlates with good performance. He said that SSGA also pushes this idea through active ownership. He said that SSGA had previously focused on gender diversity and climate change, and, in 2018, will focus on governance practices. He said that, if SSGA is not satisfied with a company's performance in these areas, SSGA may withhold support from directors at the company's annual meeting. As an example, Mr. Weinberg commented on the current gun issue. He said that, when acting as an index manager, SSGA is unable to actively divest itself of gun companies included in an index. Instead of divesting, he said, SSGA engages with the companies to understand their long term plans for addressing issues relating to their products.

Ms. Cotte said that it is not feasible to run a diversified fund that addressed every ESG issue with-

out active ownership. She said that active engagement is a more useful tool than divestment. As an example, she noted that fossil fuel companies are some of the largest researchers of alternative energy technologies, and that it does not necessarily make sense, from a long-term ESG perspective, to deprive those companies of capital. Ms. Claucherty said that Harris also emphasizes active engagement over divestment. Ms. Cotte said that investors who find an emphasis on active ownership rather than divestment to be unsatisfactory should instead consider investing in an SRI fund.

ESG Reporting. Ms. Claucherty observed that ESG developments are generally market driven. She noted that institutional investors are seeking increasingly sophisticated reporting on ESG factors, and that client reporting on ESG factors is not yet standardized. She said that, in general, European institutional investors (and asset managers) are more advanced on ESG matters than those in the US. She commented on the importance of transparency in ESG investing and reporting, recommending that firms avoid personal value judgments by documenting and strictly complying with their ESG-related policies.

Ms. Cotte said that ESG reporting is difficult, because data was often incomplete. As an example, she said it was difficult to prepare an accurate report on the carbon footprint of a fund. She then said that she is seeing an increasing number of ESG-related questions in due diligence questionnaires from prospective clients.

Ms. Cotte said that investors are now showing increasing interest in impact investing.[1] She noted that reporting on the effectiveness of impact investing is a challenge.

Regulatory environment. There was agreement among the panelists that ESG investing is – and probably should remain – market driven. Ms. Claucherty said that the DOL had recently retreated from the idea that ESG investing for retirement accounts must be based on a cost-benefit analysis of financial benefits. She went on to say that, in her view, ESG considerations do not compromise advisers' fiduciary duties; in fact, she said, ESG considerations can improve long term performance. Ms. Claucherty then noted that the SEC is playing a role by requiring proxy voting reporting. Noting that Congress and the SEC tend to be reactive, she said that she expects market forces to drive ESG investing, at least in the near term. Ms. Cotte noted that, once market forces drive conduct to a certain "market standard" level, governments could enshrine those practices in regulation.

Ms. Claucherty commented on the possibility that the EU might mandate ESG considerations as part of the investment process. She noted that the Principles for Responsible Investment (PRI) views the failure to consider ESG factors as a violation of fiduciary duty. Ms. Cotte said that, in Europe, PRI membership is essentially mandatory for investment firms, as is adherence to the UK Stewardship Code. She said that RBC had completed a PRI transparency report before signing up to the PRI. She said that RBC is currently evaluating climate-related investment risk and opportunity. She said that RBC often supports shareholder proposals for increased disclosure in this area, and commented on the Task Force on Climate-related Financial Disclosures (TCFD). She said that the TCFD provides a helpful framework, but that it is too early to call it a standard.

Turning to SEC disclosures, Mr. Weinberg said that the SEC had asked SSGA to explain its

[1] Impact investments are made into companies, organizations, and funds with the intention to generate social and environmental impact alongside a financial return. (*See,* e.g., *2017 Annual Impact Investor Survey*, Global Impact Investing Network.)

methodology for including companies in the gender diversity index, but that, generally speaking, the SEC has not raised any ESG-related disclosure issues. Mses. Cotte and Claucherty said that the SEC has not raised any ESG-related disclosure issues for their firms, either.

Ms. Cotte said that she expects that, in the future, clients will expect thoughtful integration of ESG factors into investment processes, and that institutional investors will be increasingly sophisticated and will want better reporting. She predicted that demand for impact products will grow among institutional and retail investors. Mr. Weinberg agreed, noting his belief that impact products will be attractive to millennials.

SESSION C

Evaluating Fund Disclosure in the Era of Twitter and Big Data

Moderator: Dorothy M. Donohue, Deputy General Counsel, Securities Regulation, Investment Company Institute

Speakers: Margaret Carey, Vice President, Fidelity Investments

Andrew J. Donohue, Of Counsel, Shearman & Sterling LLP

Rick A. Fleming, Investor Advocate, Office of the Investor Advocate, US Securities and Exchange Commission

This panel explored various aspects of fund disclosure from the perspectives of funds and consumers of fund information.

Mr. Fleming discussed the role of the SEC's Office of the Investor Advocate (OIA), including the OIA's 2017 launch of a study to examine the topic of disclosure effectiveness. Mr. Donohue commented that the OIA and the SEC's Division of Economic Risk Analysis (DERA) are assuming larger roles in the design and development of proposed rules, rather than merely analyzing rules after the fact.

Ms. Carey discussed the use of new technologies to better engage customers. She noted that her firm is experimenting with a virtual reality experience for customers, and had created a digital assistant to help customers with basic financial questions. She noted that online tools are more interactive for customers than paper. Mr. Donohue discussed the shift in how people access information, and expressed hope that data surveys could help identify ways to modernize disclosure.

The panelists discussed the proposed use of electronic delivery for shareholder reports, including possible use of short form shareholder report similar in concept to a summary prospectus. Ms. Carey offered strong support for electronic delivery of shareholder reports, noting that seniors are accustomed to going online for a range of purposes, including Social Security Administration statements. Mr. Fleming noted that the current, more detailed forms of shareholder reports serve a valuable role, but are tailored mainly to the needs of more sophisticated investors, and that a summary form with a more limited number of key data points would be useful for the average investor.

The panelists discussed proposed Rule 30e-3 under the 1940 Act, which would change the "default" from requiring shareholder consent for electronic delivery of shareholder reports to permitting electronic delivery absent a shareholder request for paper delivery. In response to comments that a Senate Appropriations Committee rider to a government spending bill could block the SEC from spending any money to implement Rule 30e-3, Mr. Donohue noted that the SEC should be focused on investor interests

and should move forward with the rule if it thinks it is the right thing to do, even if Congress could ultimately block its implementation. Mr. Fleming noted that he supports electronic delivery if there is actual delivery, but thought that Rule 30e-3's delivery mechanism could be improved from a post card with a URL address to a one page document that includes additional information.

The panelists also discussed whether XBRL filings were serving their intended purpose. Ms. Carey noted that if investors are not actually using XBRL, the SEC should consider changes. Mr. Donohue noted that the XBRL requirements were implemented during his tenure as Director of the SEC's Division of Investment Management. He noted that the SEC might not have approved the use of summary prospectuses during his tenure had it not also implemented XBRL at the same time. Mr. Donohue agreed that it would be a worthwhile exercise to examine how XBRL filings are being utilized.

KEYNOTE ADDRESS

Looking at Funds Through the Right Glasses

Speaker: Hester M. Peirce, Commissioner, US Securities and Exchange Commission

Commissioner Peirce outlined some of her priorities for the asset management industry in her first formal remarks as a Commissioner.

Seeing the Big Picture on Costs. Ms. Peirce discussed the importance of the SEC staff reviewing both the benefits and costs of existing and any future regulations governing the fund industry. In particular, she stressed that the staff needs to consider not only the out-of-pocket costs of compliance, but also the amount of time funds and their representatives must spend on compliance, as well the fact that there can be costs in the form of lost returns for investors. As regulations can be a barrier to entry for new funds and reduce investor choice, Ms. Peirce noted the need to be careful and thoughtful when proposing and implementing new regulations.

Retrospective Review of Fund Regulations. Ms. Peirce went on to say that once a regulation has been finalized, it is important to do a retroactive review – the staff usually does not look back once a rule is in place, but it is one of the most important things they can do for investors. If a retroactive review indicates that the costs outweigh the benefits, the staff should consider revising the regulation. The questions at the end of the day are whether a rule solved the problem it was intended to solve, and whether there are unintended costs or unintended benefits. Ms. Peirce gave as an example Rule 22e-4, which requires the adoption of liquidity risk management programs for mutual funds and ETFs (the liquidity rule). Specifically, she noted that the so-called "bucketing" requirement is much more complicated than the staff thought, and, consequently, because the SEC extended the bucketing requirement compliance deadline by six months, the staff now has a rare opportunity to review a rule before it takes full effect. She stated that it would make sense to question whether the bucketing requirement is still necessary in light of other changes made to the liquidity rule and whether the information that would be acquired by the staff under the bucketing requirement would prove useful. Ms. Peirce stressed that these questions should be asked before implementation of the liquidity rule.

International Shaping of US Regulatory Policy. Ms. Peirce continued her speech by discussing the role of international organizations in shaping US regulatory policy. She stated that international organizations play an important role in "fostering effective

regulation and supervision," but she cautioned against adopting the perspectives of international banking regulators, particularly with respect to liquidity. She stressed that funds are not banks and should not be regulated as if they were.

Fund Disclosure. Ms. Peirce went on to discuss the use of technology to better serve investors, specifically how to provide information to investors in a more user-friendly format. The summary prospectus was a good start, and she believes the staff should consider tackling variable annuity summary prospectuses and shareholder reports next with a focus on how technology can help.

ETFs. Ms. Peirce then addressed ETFs, noting that there is a need to provide rules for ETFs rather than continuing an exemptive order requirement for traditional ETFs. She specifically noted that the virtual absence of SEC Commissioners from the ETF regulatory process is concerning. She remarked that the ETF industry has grown to $3.6 trillion in assets under management (up from $680 billion in 2008 when an ETF rule was initially proposed), but still lacks coherent regulation and a level playing field. She called for a "carefully crafted rule that allows enough flexibility to accommodate a variety of models." She also called for the different divisions of the SEC to work together to address the "full problem of regulation by one-off staff action."

SESSION D

Traders Never Sleep: Issues to Consider in Managing Global Trading Desks

Moderator: Jennifer S. Choi, Chief Counsel, ICI Global

Speakers: Lisa Bloomberg, Principal Director, Finance and Risk, Accenture

Leonard Ng, Partner, Sidley Austin LLP

Michael Triessl, Senior Counsel, Capital Research and Management Company

This panel focused on the impact of EU regulations on the trading desks of global asset managers.

Trading Desk Structure. Mr. Triessl stated that Capital Group has three internal trading desks, one in each of the US, Europe and Asia, and that orders are not assigned based on where the portfolio manager is located, but on the region in which the security is principally traded. He explained that this structure was designed to ensure that trading in each region is conducted by traders with deep local expertise in the instruments being traded and with the broker-dealer firms employed. Mr. Ng noted that legal and regulatory obligations of affiliated firms frequently vary based on where the order is placed. Ms. Bloomberg noted that global asset managers are increasingly thinking strategically about how their trading desks are structured, including making contingency plans in the event a trading desk were to go down. Mr. Triessl stated that Capital Group performs pre-trade compliance testing continuously, passing the testing functions across regions in order to reduce any delays in placing trades with the trading desks.

The Markets in Financial Instruments Directive II (MiFID II) Dealing Commissions and Research Unbundling. Mr. Ng explained that, under MiFID II, EU asset managers are prohibited from accepting research from brokers unless the cost of the research is unbundled from execution costs and either paid for (i) by the asset manager out of its own assets or (ii) from a research payment account (RPA) funded by the client. He noted that, of 75 EU asset managers listed by the *Financial Times*, only two have stated that they intend to use RPAs in the EU, although non-EU affiliates of many global managers may still pay for research using soft dollars. Ms.

Bloomberg stated that global asset managers often seek to apply the most restrictive standards across their global operations in order to avoid the risks associated with applying manually processed exceptions in jurisdictions in which more permissive standards apply. Mr. Triessl stated that Capital Group continues to use commissions to pay for research, noting that its EU clients are asked to approve a maximum RPA budget of less than one basis point. He explained that Capital Group creates research budgets for all of its accounts, and uses commission sharing accounts (CSAs) for its clients that are not subject to MiFID II.

Mr. Triessl then reviewed three no-action letters that the SEC staff issued on October 26, 2017 in connection with the implementation of MiFID II, noting that the staff had acted very quickly to respond to industry concerns.[2] He explained that the SIFMA no-action letter provided that payments to a broker from an RPA would not (through July 2020) be treated as "special compensation" for investment advice that would require the broker to register as an investment adviser, that the SIFMA-AMG no-action letter provided that RPA payments alongside a commission could be treated as a commission for purposes of Section 28(e) of the Securities Exchange Act of 1934, and that the ICI no-action letter permitted aggregation of orders across accounts that bear different research charges as a result of MiFID II requirements by extending the scope and conditions of a prior no-action letter.

Mr. Ng discussed issues raised by cross-border receipt of research, explaining that if an EU firm were to receive research from its non-EU affiliate, the EU firm might need to pay the non-EU affiliate for the research, or to have its own relationship with the broker that originally provided the research. He noted that the UK Financial Conduct Authority (FCA) will be conducting a thematic review of practices with respect to dealing commissions and research unbundling and provide further guidance this year. Mr. Ng stated his expectation that such guidance will also relate to the cost of research, as assigning too low a price to research might constitute an inducement that could improperly influence a firm's order routing decisions.

MiFID II Best Execution. Mr. Ng reported that MiFID II had changed the best execution standard from "all reasonable steps" to achieve the best result for the client to "all sufficient steps" to achieve that result, noting that ESMA has stated that the new standard was higher than the former standard. Mr. Triessl stated that, in his view, the change in the wording of the standard did not reflect any change in what Capital Group seeks to achieve in executing trades. Mr. Ng also reported that EU managers would be required to disclose annually their top five brokers and venues, as well as information on the quality of execution obtained. Ms. Bloomberg noted the importance of a firm's ability to organize the required disclosures and to develop its own views regarding the information. Mr. Ng stated his expectation that the FCA will emphasize UK firms' ability to demonstrate their use of best execution data to justify their decision to use a particular broker, which may lead to managers looking at a smaller number of brokers for each transaction.

MiFID II Transparency Requirements. Mr. Ng reported that MiFID II extends transparency requirements to bonds, derivatives, and equity-like instruments. He noted that post-trade transparency obligations may fall on EU asset managers for transactions in which the manager's clients are selling and

[2] The SEC staff issued three no-action letters to, respectively, the Investment Company Institute (the ICI no-action letter), the Securities Industry and Financial Markets Association's Asset Management Group (the SIFMA-AMG Letter) and SIFMA (the SIFMA no-action letter).

the purchaser is not a "systematic internaliser" under MiFID II.[3] He stated that this may provide an incentive to transact only with dealers that are systematic internalisers. Ms. Bloomberg noted that traders have expressed concern that the new transparency requirements could potentially lead to poorer execution results for less liquid securities, though Mr. Triessl stated that the transparency requirements don't appear to have had a significant impact to date.

EU Market Abuse Regulation (MAR). Mr. Ng explained that under the MAR, a firm that possesses material non-public information on securities that are admitted to trading or otherwise traded in the EU is restricted from trading in such securities, even in non-EU markets and even where the information was not obtained in breach of any duty. Ms. Bloomberg noted the challenges potentially presented by the timing of receipt of material, non-public information.

SESSION E

Board Update: A Roundtable Discussion

Moderator: Amy B. R. Lancellotta, Managing Director, Independent Directors Council

Speakers: Timothy W. Levin, Partner, Morgan, Lewis & Bockius LLP

Elizabeth Reza, Partner, Ropes & Gray LLP

Jonathan F. Zeschin, Independent Trustee and Board Chair, Matthews Asia Funds

This panel discussed four topics: modernizing directors' responsibilities; updating fair valuation guidance; implementation of the liquidity risk management rule; and board governance.

Modernizing Fund Board Responsibilities. Ms. Lancellotta opened the session by describing the letter written by the Independent Directors Council (IDC) to Ms. Blass in October 2017 requesting that Ms. Blass prioritize a comprehensive review of fund directors' responsibilities with the goal of determining whether any modifications would be appropriate in order to enhance directors' effectiveness. She noted that Ms. Blass described her fund board outreach initiative during her address at the conference earlier in the day.

Ms. Reza then described the board's oversight role. She noted that it can be helpful for a board to think of itself as having an inquiry responsibility in respect of proposals that are brought to it by management since it is by asking questions that the board puts itself in a position to form an independent view. She noted that it is incumbent on management – including interested directors who are members of management – to make sure that the board has enough information and the right information. Mr. Zeschin commented that one of his peers describes a board's proper role as "nose in, fingers out."

The panel discussed the areas where boards add value, with Ms. Reza suggesting that certain reports should be provided in a manner that identifies "exceptions" only so that a board has time to focus on the issues and proposals that require it to exercise judgment and balance management's and shareholders' interests. The panelists noted that they do not think chief compliance officers (CCOs) should pick up additional work, but stated that some of the tasks already undertaken by CCOs duplicate work that also must be performed by the board (e.g., review of Rule 17a-7 transactions). The panel also discussed the fact that much of the board's work is done in advance of board meetings as directors prepare for the meeting, and that benefits to the board of eliminating cer-

[3] Under MiFID II, a systematic internaliser is an investment firm that, on an organized, frequent, systematic and substantial basis, deals on its own account by executing client orders outside trading venues. An investment firm is not dealing on own account where it engages in riskless back-to back matching of transactions outside a trading venue.

tain reports or moving to exceptions-based reporting should not be judged solely based on the amount of time saved during the board meeting itself. The panelists discussed the value of well-crafted reports that highlight the information that is most important for a board.

Valuation. Ms. Lancellotta introduced the discussion regarding the board's role in the valuation process by noting that the Division of Investment Management's review of this topic was being handled separately from the broader fund board outreach initiative. She reported that the Division's Chief Accountant's Office was taking a lead role in considering whether to update valuation guidance. Mr. Levin discussed common practices among boards in overseeing the valuation process and approving the methodologies used by management to fair value securities. The panel agreed that it is typical for management to review with the board fair valuation methodologies that management anticipates using over time and to present *ad hoc* methodologies to the board for ratification. The panel also agreed that each complex should tailor its valuation reporting to the board in order to appropriately highlight the issues that are most relevant for that complex.

Liquidity Risk Management Programs. The panel, noting that certain provisions of the liquidity risk management rule have been delayed, discussed where in the implementation process most complexes appear to be. The panelists agreed that most complexes have been doing a good job updating the board on the status of their efforts, with work around the selection of service providers largely complete. Mr. Levin reported that he has now seen several service providers meet with boards to discuss their approach to the liquidity risk management rule and that he has been impressed by their presentations. The panelists agreed that boards have not decided whether they will approve or just review the interim liquidity risk management programs that will be implemented in December 2018 now that board approval is not required at that time.

Governance. Mr. Zeschin led a discussion regarding governance topics. The panelists agreed that there continues to be mixed practice in respect of how boards conduct their annual self-assessment, with some boards preparing written comments and other boards limiting their self-assessment to an oral discussion. Ms. Reza described the concerns that a written self-assessment raises and discussed ways of mitigating those concerns, such as promptly destroying written materials after the meeting and utilizing counsel to run the self-assessment process to help establish a basis for attorney-client privilege. The panel also discussed retirement policies, and Ms. Reza described one board's process of using a peer assessment to evaluate the efficacy of board members rather than setting a retirement age. She noted that this puts a burden on the board to affirmatively address any performance issues that are identified through the peer assessment process. Ms. Reza reported that she is seeing boards discuss the idea of term limits, but the panelists said they have not seen fund boards adopt term limits. Ms. Reza compared the practice of corporate boards, which are more likely to have term limits, noting that because corporate boards have annual shareholder meetings, it is easier for them to propose new directors and, thereby, refresh the board's composition. The panel agreed that changes to committee membership and committee chairs on a fund board can also serve to refresh the board and its approach to various issues, but noted that there are also benefits from having board and committee members with years of experience, especially given the significant regulatory overlay of the fund industry. The panel discussed the process of

searching for new board members and the importance of finding directors who are a good fit for the board, with Mr. Levin noting that failure to do so can have long-lasting ramifications for the dynamics on the board.

GENERAL SESSION

Moving from "Broken Windows" to Protecting the Main Street Investor: OCIE and Enforcement Revamp

Moderator: Frank J. Nasta, Managing Director, JP Morgan Asset Management

Speakers: Barry P. Barbash, Partner, Willkie Farr & Gallagher LLP

Peter B. Driscoll, Director, Office of Compliance Inspections and Examinations, US Securities and Exchange Commission

Anthony S. Kelly, Co-chief, Asset Management Unit, Division of Enforcement, US Securities and Exchange Commission

This panel focused on inspection and enforcement trends at the SEC – as the title indicates, the discussion contrasted the "broken windows" approach taken by former SEC Chair Mary Jo White with current trends under SEC Chairman Jay Clayton.

Broken Windows vs. Current Approach. Mr. Barbash traced the term "broken windows" back to 1982, referencing approaches for cleaning up urban areas. He described it as a "more prosecutorial" approach, compared to the more retail-focused approach under Chairman Clayton. Mr. Driscoll stated that the SEC's Office of Compliance Inspections and Examinations (OCIE) has been focused on retail investor issues for more than two years, as set forth in OCIE's annual priorities. He noted that OCIE will refer cases to the Division of Enforcement (Enforcement) if firms have repeat violations and that OCIE tries to catch smaller issues early so they don't become larger issues. Mr. Kelly disagreed with the notion that there has been a significant shift and stated that retail investors have always been a primary focus for Enforcement.

Structure and Priorities of OCIE. Mr. Driscoll noted changes at OCIE, including transferring about 100 broker-dealer examiners to the investment advisory/investment company examination staff, which has resulted in a significant increase in the number of investment advisers inspected (from roughly 8-10%/year to 15.49% during FY 2017). He noted that OCIE has shifted to risk-based exams and away from wall-to-wall exams in an effort to be more efficient. He explained that the goal is to spend less time in the field visiting firms and instead to request and examine documents prior to any on-site meetings. He stated that OCIE has begun to hire quantitative analysts to help with trading issues and to develop better tools for examiners, such as working on a new tool that allows OCIE to analyze trade blotter information more quickly. He also stated that the new Form N-PORT information will be examined by OCIE and could be very useful, particularly if a "market event" occurs. He stressed that one of OCIE's four pillars is to promote compliance and that sharing best practices is one avenue to achieve that goal. He discussed OCIE's recent release of its 2018 examination priorities. In terms of mutual funds and ETFs, Mr. Driscoll noted that OCIE looks at funds that have not performed well to determine, for example, if there is a liquidity problem, that OCIE examines advisers to funds that have little experience in the area, and that it will examine ETFs that use custom-built indices for potential conflicts and ETFs that have little secondary trading and, thus, could implicate illiquidity concerns. He stated that OCIE is looking at broker-dealers that are in-

volved in sales of cryptocurrencies. Mr. Driscoll noted that distribution-in-guise issues have been "rolled into" OCIE's regular exams and that there are no new initiatives in this area. In terms of OCIE's use of data provided by registrants, Mr. Driscoll emphasized that OCIE takes data protection extremely seriously and that OCIE's Data Protection Committee has developed new policies to protect data. He noted that OCIE is working on a Risk Alert that will summarize the top investment company violations (similar to the Feb. 7, 2017 Risk Alert citing the most frequent compliance topics identified in examinations of investment advisers).

Structure and Priorities of Enforcement: Mr. Kelly noted the formation of two new groups within Enforcement under Chairman Clayton: the Cyber Unit and the Retail Strategy Task Force. He stated that Enforcement works closely with the Division of Economic Research and Analysis and OCIE to analyze data on various potential trading violations. Mr. Kelly emphasized that the new Cyber Unit has been very active in investigating and bringing cases involving a wide variety of conduct, including hacking, account intrusions, and fraudulent initial coin offerings. The panel discussed the SEC's recent Share Class Selection Disclosure Initiative (February 12, 2018). Mr. Kelly stated that failure to disclose differences among share classes continues to be a persistent problem and that Enforcement hopes the initiative will result in returning money to investors. Mr. Barbash discussed the pros and cons of self-reporting and noted that the Share Class Selection Disclosure Initiative fails to state that there will not be an enforcement case if a firm comes forward and self-reports. Mr. Kelly stated that self-reporting will yield the most "credit" to a firm from Enforcement and that the staff is looking for actions that allow the staff to complete an investigation quickly. Mr. Kelly noted that Enforcement's distribution-in-guise sweep has been completed, but that such cases could still be pursued in the future. He also noted that Enforcement may react more aggressively (e.g., using subpoenas) if parties use delay tactics, fail to produce documents or are non-responsive to Enforcement requests.

SESSION F

Tax Act of 2017: Implications for the Fund Industry and Fund Investors

Moderator: Katie Sunderland, Counsel, Tax Law, Investment Company Institute

Speakers: Deanna Flores, Principal, Washington National Tax, National Tax Leader, Public Investment Management, KPMG LLP

Michael Horn, Vice President and Tax Counsel, Ameriprise Financial, Inc.

Dana Smith, Managing Director, Fund Administration, Charles Schwab Investment Management, Inc.

This panel focused on the Tax Act of 2017 (Tax Act), signed into law in December 2017, and the impact on the mutual fund industry and fund investors.

Provisions Not in the Final Tax Act. Ms. Sunderland began by describing provisions that were not in the Tax Act, that had they been included, likely would have had an adverse effect on the industry. For example, she stated that the Tax Act preserves tax incentives for qualified retirement plans, contrary to some previous proposals. She stated that, in addition, the tax exemption for interest on municipal bonds was largely retained.

20% Deduction for Funds Investing in REITs and MLPs. The panelists then turned to provisions that are included in the Tax Act. Mr. Horn began by describing a new 20% deduction available to individu-

als for certain distributions from REITs and net income from publicly traded partnerships, such as MLPs. He explained that regulated investment companies (RICs) are not eligible to take such deduction, and that RICs that invest in real estate investment trusts (REITs) and master limited partnerships (MLPs) currently are not able to pass through the deduction to their shareholders. Ms. Sunderland noted that the ICI has been working with Treasury, the House Ways & Means Committee and the Senate Finance Committee to permit RICs to pass through the 20% deduction to individual shareholders, and that the ICI remains cautiously optimistic. While an individual currently might have better after-tax returns by investing directly in a REIT or publicly traded partnership, Mr. Horn noted, he stated that he has not seen many outflows from REIT or MLP RICs as a result of the Tax Act.

Book-Tax Conformity. Ms. Flores then discussed a new provision in the Tax Act requiring book-tax conformity for certain income. She stated that the new provision requires taxpayers, including RICs, to recognize certain items of income no later than the taxable year in which such items are taken into account for financial reporting purposes. Ms. Flores noted that it is unclear whether the new provision applies to original issue discount and market discount on bonds; if it does then the new provision may have the effect of accelerating income to a RIC. She stated that, for example, for RICs that do not make an election to accrue market discount for tax purposes, the application of the new provision would instead require the recognition of income on the same schedule used for financial accounting purposes. Ms. Flores further described the complexity of the rule and its application to RICs, and noted that the ICI intends to submit comments to Treasury to address these issues.

Interest Expense Limitation. Ms. Sunderland briefly noted the Tax Act's new interest expense limitation, which limits the deduction for net business interest expense to 30% of adjusted taxable income. She stated that such limitation may well not apply to RICs, because interest expense incurred by a RIC is not typically thought of as business interest expense. She stated that, in addition, the limitation applies to *net* interest expense, such that interest expense can offset interest income in full. Therefore, she explained, to the extent applicable, this limitation may affect leveraged closed-end equity funds and business development companies rather than fixed-income funds generally. Ms. Sunderland stated that the ICI has submitted a letter to Treasury noting that, to the extent the limitation applies to RICs, it should apply before the dividends paid deduction.

International Provisions. Ms. Smith spoke about a transitional repatriation rule applicable to funds that own 10% or more of certain foreign corporations. She explained that this rule provides that such funds must include as current income their pro rata share of the foreign corporation's accumulated earnings and profits for the last taxable year beginning before January 1, 2018. She stated that application of the rule to RICs raises several questions, including (i) whether the resulting income is qualifying RIC income, (ii) how the RIC can obtain the necessary information from the foreign corporation to determine its income inclusion, and (iii) for excise tax purposes whether the income was included for 2017 or will be for 2018. Ms. Sunderland noted that the ICI has submitted comments to Treasury, asking that special rules that were provided to REITs (e.g., with respect to treating the income as qualifying income) apply to RICs as well.

Ms. Flores spoke about some of the other international provisions in the Tax Act, noting that many such provisions do not apply to RICs but could apply to the fund managers. She stated that, for example,

the so-called "BEAT" imposes a minimum tax on groups making significant deductible payments to related foreign persons. She stated that this does not apply to RICs but could impose an additional tax on large multi-national managers, and that fund managers considering whether there might be a benefit to changing their structure in light of the Tax Act should also consider how they would react should the rules change again. Ms. Flores then described a new provision referred to as "GILTI," which is a minimum tax regime on excess returns (other than Subpart F income) earned by a US shareholder in a controlled foreign corporation. She explained that this provision can apply to RICs, and when it does, it has a harsher effect than when it applies to other US corporations. While other US corporations get a 50% deduction for the amount of income included, she noted, RICs are not entitled to such deduction. In addition, GILTI is treated in the same manner as "Subpart F income" and, if proposed regulations requiring that Subpart F income be distributed currently to constitute qualifying RIC income were to be finalized, RICs with GILTI could have non-qualifying income.

What's Next. The panel concluded with a discussion of what to expect next with respect to the Tax Act. The panelists all believe that taxpayers will encounter operational issues as they apply the new rules and that it may well take a long time to receive guidance from Treasury and IRS on open questions.

SESSION G

Mutual Fund Civil Litigation: Year in Review

Moderator: Julia Ulstrup, Vice President and General Counsel, ICI Mutual Insurance Company

Speakers: Keith R. Dutill, Partner, Stradley Ronon Stevens & Young, LLP
Heidi W. Hardin, Executive Vice President and General Counsel, MFS Investment Management
Mark Holland, Partner, Goodwin Procter LLP

This panel discussed excessive fee litigation under Section 36(b), prospectus liability/disclosure-based litigation, derivative litigation under state law, funds as plaintiffs in civil litigation and other litigation developments.

Fee Litigation Under 36(b). The panel began by discussing the current status of excessive fee litigation under Section 36(b) of the 1940 Act. Mr. Dutill kicked-off the discussion by remarking on three significant decisions in the past month.

First, Mr. Dutill commented on *Pirundini v. J.P. Morgan Investment Management, Inc.*, a suit alleging excessive fees in the adviser vs. sub-adviser context that was decided at the motion to dismiss stage in favor of the defendant. Mr. Dutill noted that it is very difficult to win at the motion to dismiss stage as the court is required to assume the truth of all allegations, and the plaintiff gets the benefit of all reasonable inferences. He further noted that, in its decision, the *Pirundini* court stated that in addition to making "inapt comparisons," the plaintiff failed to raise an inference that the advisory fee bore no reasonable relationship to the services rendered.

Mr. Dutill next stated that in two separate rulings over the past week, federal district courts have granted motions for summary judgment in favor of investment adviser defendants. First, Mr. Dutill commented on *Goodman v. J.P. Morgan Investment Management, Inc.*, wherein plaintiffs alleged that fees charged by the adviser to its proprietary funds were excessive as evidenced by the lower fees charged by the adviser to funds it sub-advises. In *Goodman*, he continued, the US District Court for the Southern District of Ohio rejected the sub-advised fund comparison

relying on the Supreme Court's instruction in *Jones v. Harris* that if the services rendered are sufficiently different that a comparison is not probative, then courts must reject such a comparison. Mr. Holland then commented on the court's reliance on a report submitted by J.P. Morgan's expert. The report, he stated, described the liquidity risks, business risks, operational risks, pricing risks, litigation risks, regulatory risks and reputational risks that advisers confront, which are vastly different from the risks faced by sub-advisers. He noted that the court's detailed analysis of the factors in the report should provide a useful tool for defendants in other cases where plaintiffs assert a similar theory of liability.

Mr. Dutill stated that a few days after the *Goodman* decision, the US District Court for the Northern District of Illinois granted summary judgment to Harbor Capital in *Zehrer v. Harbor Capital Advisors, Inc.* Mr. Dutill stated that, like the *Goodman* court, the *Harbor Capital* court began with a review of the arms-length bargaining standard established in *Jones v. Harris.* He noted that the court focused on the manager-of-managers theory at the center of the plaintiff's case. He stated that the court addressed the plaintiff's principal contention that only those advisory services directly performed by Harbor Capital should be considered in determining whether its fees were excessive, and those provided by the sub-advisers retained by Harbor Capital should be excluded. The court held that disregarding the services rendered by the sub-adviser "solely because [the adviser] made the permissible business decision that they were better or more efficiently (or even more inexpensively) performed by [sub-advisers] is nonsensical."

Messrs. Dutill and Holland noted that the *Goodman* and *Harbor Capital* cases reject the two theories of liability relied on most heavily by plaintiffs since *Jones v. Harris*, adding to the recent successes by adviser defendants in 36(b) actions.

Prospectus Liability/Disclosure-Based Litigation. The panel then discussed prospectus liability and disclosure-based litigation. In this regard, Mr. Holland noted that, in contrast to Section 36(b) cases, prospectus liability cases often arise when shareholders have lost money due to poor performance. In this context, he continued, shareholders cannot sue directly for mismanagement, so the cases are styled as disclosure actions under Section 11 or Section 12(a)(2) of the Securities Act of 1933. He stated that Section 11 imposes civil liability on, among others, a fund, its directors, and its affiliated distributor if any part of the registration statement contains an untrue material fact or omits to state a material fact required to be stated to make the statement therein not misleading. He noted that a plaintiff generally need not prove that he relied on the misstatement or omission or that the misstatement or omission caused his loss. Significantly, a plaintiff need not prove scienter (i.e., culpable state of mind) in bringing a Section 11 or Section 12(a)(2) claim. Mr. Holland further noted that Section 12(a)(2) authorizes shareholder suits for material misstatements or omissions against persons who offer and sell fund shares. He stated that judgments in Section 11 and 12 cases typically are paid out of fund assets. Ms. Hardin commented on the ongoing importance of reviewing and updating fund disclosure to protect against such actions.

Derivative Litigation Under State Law. Mr. Holland reminded the audience that fund shareholders do not have private rights of action to recover damages for violations under the 1940 Act aside from excessive fee claims under Section 36(b). Thus, he noted, when a fund suffers investment losses, shareholders often pursue claims under state law. He stated that most states have a "universal demand" re-

quirement that requires shareholders to make a pre-suit demand on the board of directors while others allow a shareholder to bring a derivative action without a demand if a demand would be futile.

Mr. Holland stated that once a corporation receives a shareholder's written demand to take action, it may assume control of the litigation or reject the demand. If the corporation accepts the demand, the shareholder's right to commence or control a suit terminates unless the shareholder demonstrates that the corporation has not adequately pursued the matter. If the board rejects the demand, its rejection may be protected by the "business judgment doctrine," which presumes that directors act in the best-interests of the corporation, and protects directors from liability where the decision is made in good faith by independent decision makers after reasonable inquiry. Thus, Mr. Holland noted, the manner in which a fund's board responds to a demand often becomes the focus of the litigation.

Mr. Holland stated that those states that still embrace a futility exception regard it as very limited. He explained that to successfully plead that a demand should be excused as futile, a plaintiff must allege either that a demand, or a delay in awaiting a response to a demand, would cause irreparable harm to the corporation, or a majority of the directors are so personally and directly conflicted or committed to the issue in dispute that they cannot reasonably be expected to respond to a demand in good faith. He noted that, in practice, demand review is often handled by a special litigation committee of a fund's board. Mr. Holland commented on a recent case illustrating a situation wherein a complaint was dismissed because the plaintiff shareholder failed to make a demand on the board, and another situation wherein failure to make a demand was excused because the court found that the independent directors' personal involvement with the transaction and the individuals involved therein were sufficient to excuse demand.

Other Litigation Developments. The panel briefly discussed other litigation topics. As to ERISA, the panel noted that eight new proprietary fund suits were filed last year and the results on motions to dismiss have been varied – some granted and others denied.

Mr. Dutill then commented on whistleblower cases. He discussed *Digital Realty Trust, Inc. v. Somers* wherein the US Supreme Court reversed and remanded a case that held that Dodd-Frank's anti-retaliation protections do not extend to an individual, like Somers, who didn't report a violation of the securities laws to the SEC.

Mr. Dutill also commented on the *Tribune* bankruptcy matter, noting that, based on the recent US Supreme Court decision therein, the right of fund companies to use the safe harbor under the federal bankruptcy provisions should not be impacted.

Funds as Plaintiffs in Civil Litigation. Lastly, the panel discussed funds as plaintiffs in civil litigation. Mr. Dutill reminded the attendees that, in the US, shareholders can opt out of class actions and file direct actions. He commented on the recent trend of funds opting out as class action plaintiffs and pursuing claims directly. In this regard, he cited the *Petrobras* case from a few years ago wherein approximately 500 shareholders (including funds from twenty-seven different mutual fund companies) opted out of the class action. Mr. Dutill noted that the volume and scale of opt-outs in the *Petrobras* matter made the *Petrobras* class action secondary to the opt-out cases. Mr. Dutill noted the main reason a plaintiff would opt-out of a class action and pursue a claim directly is that class action recovery amounts are often inadequate in light of losses suffered by institutional investors.

Mr. Dutill noted that there is a similar phenomenon happening with respect to class actions overseas, but for different reasons. Mr. Dutill described the case of *Morrison v. National Australia Bank* wherein the US Supreme Court held that Section 10(b) of the Securities Exchange Act of 1934 does not apply to transactions outside the US, even if they have a domestic impact. Thus, he continued, if a US registered fund buys securities overseas, the only effective remedy will likely be the pursuit of a direct action overseas.

Ms. Hardin then commented on the operational challenges faced by in-house legal departments with regard to both domestic and foreign class actions and opt-out cases. She noted that one would likely have very high losses before determining to pursue a direct claim. She further noted that these cases involve enormous document production requests and often times fund portfolio managers are deposed.

SESSION H

Blockchain, Robotics, and AI, Oh My! Considerations for Legal and Compliance

Moderator: Rachel H. Graham, Associate General Counsel, Securities Regulation, Investment Company Institute

Speaker: Susan Gault-Brown, Partner, Morrison & Foerster LLP

Christyn L. Rossman, Senior Counsel, The Vanguard Group

Jib Wilkinson, Principal, Financial Services and Technology, Deloitte Consulting LLP

This panel examined some of the innovative technologies that the fund industry must contend with in the coming years, including blockchain technologies, artificial intelligence and robotics.

Robotics and AI. Mr. Wilkinson began by describing the continuum from Robotic Process Automation (RPA) to Cognitive Automation (CA) to Artificial Intelligence (AI). He then described various technologies that the fund industry uses in these three areas.

He explained that RPA, which mimics human actions, is used for applications such as retirement plan setup and know your client (KYC)/client research. When CA mimics or augments qualitative human judgments, he noted that it is used for natural language processing (e.g., for analyzing financial statement data) and natural language generation (e.g., for generating portfolio commentary). When CA augments human intelligence, it is often used for self-service support applications such as chat bots or virtual assistants. He explained that, unlike RPA or CA, AI mimics human intelligence. AI provides a means of solving problems without a human specifically coding the solutions into the system (as with self-driving cars) and offers a way to construct systems that improve themselves over time. The panelists stated that, in the asset management space, AI is beginning to be used to select or recommend investments through machine learning, predictive analysis and information extraction.

Ms. Rossman discussed Vanguard's efforts to develop automated customer service applications. She noted that such automated applications, which are different than offshoring portfolio transaction review, are now employed to execute portfolio review processes. Offshore call centers are instead employed to augment the customer service process where they can add more value.

Ms. Gault-Brown then discussed how firms should go about developing policies and processes to manage the compliance risks associated with automated processes, stressing that it is important to en-

sure that processes actually perform as designed. She suggested that asset managers should conduct compliance testing of automated processes to confirm that the automated functions are performing and that required records are being maintained. She added that while robotic processes are designed to increase consistency of application and avoid human errors, such systems rely upon the adequacy of the data inputs. Compliance measures should ensure that the automated processes do not suffer from the so-called “garbage in, garbage out” problem.

The panel next discussed the SEC’s MAGIC data analytics system that was discussed by Ms. Blass during her presentation. Ms. Rossman expressed concern that the system would be utilized to draw inappropriate correlations. She also expressed concern about the security of the system given the vast amounts of data the SEC now collects. Ms. Gault-Brown then noted that, given the increasing use of AI, both by regulators and asset managers, it is important to understand how AI is being utilized and, in the case of asset managers, that the uses of AI are appropriately disclosed.

Blockchain and Cryptocurrencies. Mr. Wilkinson described the basics of blockchain technology, noting that, at bottom, it is a ledger. He explained that the ledger is maintained in a distributed network of computers rather than in a central location, and that the ledger is not controlled by a single authority or government. Instead, the ledger is maintained and updated using consensus-based computing – when a majority of the network agrees that the terms of a transaction have been satisfied, the “block” reflecting that transaction has been “solved” and is added to the blockchain. He then discussed several common uses of blockchain technology, including for recordkeeping, transferring value and for “smart contracts” (which are contracts that self-execute when the network concludes that the embedded contract conditions have been met).

Ms. Rossman noted that the promise of blockchain technology is that it serves to remove friction and the need for establishing trust between transacting parties, either through a governmental or other empowered authority (such as a central bank or an entity like the Depository Trust Company). She added that Vanguard is developing a permissioned private blockchain with one of its index providers.

The panel then discussed the challenges of investing in cryptocurrencies. Ms. Gault-Brown discussed the January letter from Ms. Blass to the ICI and SIFMA-AMG regarding cryptocurrency fund issues, noting that the SEC is seeking additional information on issues such as custody, valuation, liquidity and trading cryptocurrencies before approving ETPs that invest primarily in cryptocurrencies. She noted that cryptocurrencies and the other technologies the panel is discussing do not change the underlying fiduciary obligations of asset managers. Ms. Rossman agreed, adding that it is important to keep legal and compliance personnel apprised of plans to utilize or invest in new technologies or asset classes. Mr. Wilkinson emphasized the importance of understanding what the business is trying to accomplish with new technology.

The panel next discussed how to engage with fund boards and regulators regarding these new technologies. Ms. Rossman stressed the importance of having someone who can explain these technologies to directors and regulators in a way that enables them to understand the fundamentals of the technologies without overwhelming them with minutiae. Ms. Gault-Brown added that it is equally important that asset managers understand and can articulate the risks and benefits of these technologies for clients, auditors, fund boards and regulators.

SESSION I

New Antitrust Frontier: Considerations When Funds Hold Stock in Competing Firms

Moderator: George M. Gilbert, Assistant General Counsel, Securities Regulation, Investment Company Institute

Speakers: Molly S. Boast, Partner, WilmerHale
Joanne Medero, Managing Director, BlackRock, Inc.
Ryan Nolan, Senior Legal Counsel, Legal Department, T. Rowe Price Associates, Inc.

This panel provided an overview of antitrust considerations in the investment company context.

Mr. Gilbert provided an introduction to the topic noting that, as a preliminary matter, fund ownership of competing firms in concentrated industries, such as airlines or banking, can create anti-competitive effects, even if holdings are small. He noted that academic articles on the topic have gathered steam in recent years and, in turn, the press and policy makers have taken note.

By way of regulatory background, Ms. Boast discussed the key antitrust statutes that inform the common ownership discussion: Section 1 of the Sherman Act, Section 7 of the Clayton Act and the Hart-Scott-Rodino Act (HSR). Ms. Boast stated that Section 1 of the Sherman Act prohibits any contract, combination or conspiracy in restraint of trade. She noted that an agreement can be inferred from circumstances and the scope of the prohibition covers agreement on price, output and other competitive terms. She explained that the key consideration for funds is to avoid organizing collusion (i.e., being the hub or ringmaster) among competing issuers. In this regard, she noted that a plaintiff must prove a common understanding (e.g., competitors know who is involved and that cooperation is required for success). She further noted that such common understanding could convert parallel, individual conduct into a violation. Ms. Boast next explained that Section 7 of the Clayton Act prohibits acquisition of stock, or use of stock by voting or granting of proxies, where the effect may be substantially to lessen competition. Lastly, Ms. Boast explained that HSR requires notification of, and a waiting period for, stock acquisitions above certain thresholds and provides an exception for acquisitions below 10% of shares if acquired solely for investment purposes.

The panel next discussed how these regulations come into play in the investment company context. Ms. Medero explained that recent academic literature on common ownership and index investing seeks to establish a link between common ownership and consumer prices. Some of the literature, she stated, argues that common ownership raises antitrust implications. She further noted that much of this literature is predicated on misconceptions about the asset management industry in general, and index investing in particular.

Ms. Medero stated that financial regulatory authorities around the world require reporting by significant shareholders of listed companies (typically above the 5% threshold). Reporting obligations, she continued, may use different criteria as to what constitutes holders for reporting purposes and, when reported, may not enable one to distinguish between shareholders who retain the economic benefit of the holdings as compared to entities (such as asset managers) who invest on behalf of their clients. Thus, she noted, these regulatory reports might not always accurately represent the economic owner of the securities, but are nonetheless forming the basis for many academic articles on antirust considerations in the asset management industry.

Mr. Nolan then commented on his firm's practice with regard to antitrust considerations. First, he noted the need to educate investment professionals to be sensitive to material non-public information. He also noted that firms should consider whether antitrust considerations should be added to or enhanced within compliance policies and procedures in light of a firm's particular investment practices and product offerings. Lastly, he discussed the importance of an organization's proxy voting policies in light of antitrust considerations.

GENERAL SESSION

Being the Inside Man on an Insider Trading Criminal Action: Tipper X

Speaker: Tom Hardin, Tipper X Advisors

Mr. Hardin discussed a compelling, cautionary tale about the effect of insider trading on his career and family and his experience cooperating with the FBI as the informant known as "Tipper X" to help build over 80 criminal cases of securities fraud (insider trading).

Mr. Hardin described how he was a 28-year-old junior partner at a startup long-short technology-focused hedge fund in 2006 and noticed that some of his competitors were blatantly trading on material non-public information. He described a *Financial Times*-commissioned third-party research study around this time that might be read to support his view. The study looked at the stock prices of target companies involved in the largest M&A deals of that time, finding that 60% of those target companies had unexplained spikes in their share prices as compared with only 14% in 2003. (Anecdotally, he noted that a research paper in 2015 put a more recent figure at 25%.)

He described the pressures that resulted from competing with the investment returns of investors, such as Raj Rajaratnam, who were engaging in insider trading. For example, he stated that his new hedge fund returned 20% net of fees in its first year but one potential investor who declined to invest said that the startup's returns were impressive, but not a good enough reason to invest with a new shop when he was already investing in Raj Rajaratnam's fund, a known quantity that had outperformed the 20% return of Mr. Hardin's startup.

With that investor rejection still fresh in his mind, a few months later, in March 2007, Mr. Hardin stated that he entered into the first of four illegal trades based on inside information. He said that he received a call from Ms. Roomy Kahn — an acquaintance he had met earlier in his career who had a history of transacting in inside information — with a tip. He said that she provided the date and price at which a technology company, Kronos, was going to be acquired by a private equity firm. After Mr. Hardin learned that Ms. Khan and others had taken large positions based on that information, he decided to take the largest position in Kronos that he was authorized to take unilaterally (only 0.9% of the fund's portfolio). Mr. Hardin described the three subsequent illegal trades he placed based on inside information — all 0.9% positions taken unilaterally. In one case, he said that he took a position based on information he purchased for $15,000 in cash from an employee at a public relations firm. Ultimately, Mr. Hardin stated that his firm made only $1.2 million on the illegal trades, improving fund performance by a paltry 1% from 30% to 31%, translating to a personal benefit to Mr. Hardin of only $46,000. Mr. Hardin stated that he was approached by the FBI in 2008. He said that he cooperated with the FBI's investigation through 2009 by providing information he was aware of personally

and by wearing a wire to gather evidence against other investment professionals who were engaged in insider trading.

Mr. Hardin described several lessons to be learned from his experiences:

1. Be careful who you surround yourself with. Very early in his career, he was surrounded by people who were engaging in illegal activity. That exposure made it more likely he would follow a similar path.

2. Be wary of rationalizing bad conduct. Warning signs are thinking that "it's OK because everyone is doing it," "it's a victimless crime," "it's a minor transgression" or "no one is getting hurt." He emphasized that plenty of people get hurt by insider trading. Even in his case where he received no jail time, his felony conviction ruined his career, is a major obstacle to getting hired in a new line of work, was a personal embarrassment, profoundly affected his family and relationships with friends, and negatively affected his health. The prospect of incarceration loomed over him for more than five years after his guilty plea, and that was after cooperating with the FBI for approximately two years.

3. It can be easy to become desensitized to breaking the law through lesser violations (speeding, illegally downloading music, illegal online gambling) leading to a greater willingness to engage in more serious transgressions.

4. Isolated decision-making can lead to riskier behavior. All of Mr. Hardin's trades were executed unilaterally.

He said that an organization's culture is key. It is estimated that 10% of the workforce is morally incorruptible, 10% is prone to actively bending or breaking the rules or stealing, and the remaining 80% is significantly influenced by the culture and environment at the organization. The tone at all levels of an organization is important.

GENERAL SESSION

Alert Level Red, Yellow, or Green: How's Your Anxiety Level?

Moderator: Tamara K. Salmon, Associate General Counsel, Securities Regulation, Investment Company Institute

Speaker: Darrell N. Braman, Vice President, Managing Counsel, T. Rowe Price Associates, Inc.

Matt Chambers, Chief Compliance Officer, Horizon Funds

Robert G. Dorsey, Interested Trustee, Ultimus Managers Trust

Robert I. Frenkel, General Counsel, US Mutual Funds, Legg Mason

Mary E. Keefe, Managing Director, Regulatory Affairs, Nuveen Investments, Inc.

Karrie McMillan, Independent Director, Patomak Global Partners, LLC

Michelle Rosenberg, Senior Vice President Head of Legal, North America, Janus Henderson Investors

In the final session of the conference, panelists were asked to express their levels of concern over the next twelve months with respect to specified topics relevant to the fund industry. Some of topics discussed by the panelists are described below.

Fund investments in the marijuana industry. Panelists were split with some having a low level of concern while others expressing a higher level of concern. Panelists with low levels of concern described these investments as inevitable because so many states have legalized marijuana under various circumstances, while one panelist who expressed greater concern noted that marijuana has not been legalized at the federal level and that it may be difficult for a registered fund to invest in a company if its business activities contravene federal law notwith-

standing business or other pressures to invest in the industry.

Millennials as industry disruptors. Panelists were generally moderately concerned. Some panelists noted that a potentially significant impact is the way millennials use technology. They expressed uncertainty about whether the SEC's disclosure rules will enable the fund industry to adapt effectively. For example, the panelists stated that using prospectuses that are more easily readable on a small handheld device would be a helpful development.

Social and shareholder activism affecting fund investments (e.g., gun manufacturers). Panelists were generally moderately concerned. Some noted that the fund industry has faced similar issues in the past regarding climate change or Darfur, while others noted the possibility of public relations issues with such large portions of the population expressing strong views. Panelists also noted the challenge of company valuations being affected by reputational risk and stated that fund call centers need to be prepared to answer questions about investments in sensitive industries. Although none of the panelists expressed high levels of concern, 24% of the audience members who responded about this topic did.

Common ownership by institutional investors. Nearly all panelists expressed a moderate level of concern because it is unclear what federal regulators might do in response to the narrative that has developed in the media. Some noted that significant political pressure may ensue and it may prove quite difficult for the industry to change the direction of the public narrative that has already developed about the hazards of concentrated control of equities through asset management firms.

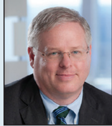
Emergence of state-level activism. Most of the panel expressed a high level of concern. Panelists noted the burdens involved with responding to legal and enforcement developments across 50 states are extremely disruptive. They also noted that many states are motivated because they are cash strapped and state-level enforcement actions can provide important state revenue. It is also relatively easy for states' attorneys general to "jump on the bandwagon" after one state initiates an action.

Use of the cloud. Panelists were somewhat mixed. Some identified the myriad potential benefits, such as efficiency and facilitating disaster recovery. Others were concerned about data security and whether storing books and records in the cloud comports with regulatory books and records requirements.

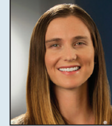
Application of the EU's General Data Protection Regulation. All of the panelists expressed a moderate level of concern, while 41% of the audience members who responded expressed a high level of concern. The panelists noted that perhaps the biggest challenge has been vendor negotiations because many vendors are not able to comply and/or it is difficult to negotiate new contractual terms.

SEC's ability to secure data. All of the panelists except one expressed a high level of concern, and 93% of the audience who responded similarly expressed a high level of concern. One panelist expressed moderate concern in light of the recent Form N-PORT reporting delays, a possible indication of the seriousness with which the SEC is moving to address the matter.

The following lawyers attended the conference or contributed to the preparation of this report:

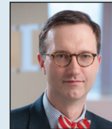


Edward Baer
Counsel—San Francisco
edward.baer@ropesgray.com
+1 415 315 6328



Colleen Meyer
Counsel—San Francisco
colleen.meyer@ropesgray.com
+1 415 315 6366

James Brown
Partner—New York
james.brown@ropesgray.com
+1 212 596 9696

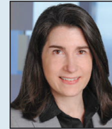


George B. Raine
Partner—Boston
george.raine@ropesgray.com
+1 617 951 7556

Sarah Clinton
Partner—Boston
sarah.clinton@ropesgray.com
+1 617 951 7375

Elizabeth Reza
Partner—Boston
elizabeth.reza@ropesgray.com
+1 617 951 7919

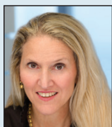
Pamela Glazier
Partner—Boston
pamela.glazier@ropesgray.com
+1 617 951 7420



Rita Rubin
Counsel—Chicago
rita.rubin@ropesgray.com
+1 312 845 1241

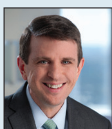
Thomas R. Hiller
Partner—Boston
thomas.hiller@ropesgray.com
+1 617 951 7439

Adam M. Schlichtmann
Partner—Boston
adam.schlichtmann@ropesgray.com
+1 617 951 7114



Susan Johnston
Partner—Boston
susan.johnston@ropesgray.com
+1 617 951 7301

James E. Thomas
Partner—Boston
james.thomas@ropesgray.com
+1 617 951 7367



Brian D. McCabe
Partner—Boston
brian.mccabe@ropesgray.com
+1 617 951 7801

David Tittsworth
Counsel—Washington, D.C.
david.tittsworth@ropesgray.com
+1 202 508 4722

OUR OFFICES WORLDWIDE

NEW YORK
1211 Avenue of the Americas
New York, NY 10036

T +1 212 596 9000
F +1 212 596 9090

CHICAGO
191 North Wacker Drive
32nd Floor
Chicago, IL 60606

T +1 312 845 1200
F +1 312 845 5500

HONG KONG
One Exchange Square
41st Floor
8 Connaught Place
Central, Hong Kong

T +852 3664 6488
F +852 3664 6588

WASHINGTON, D.C.
2099 Pennsylvania Avenue, NW
Washington, DC 20006

T +1 202 508 4600
F +1 202 508 4650

SAN FRANCISCO
Three Embarcadero Center
San Francisco, CA 94111

T +1 415 315 6300
F +1 415 315 6350

SHANGHAI
36F, Park Place
1601 Nanjing Road West
Shanghai 200040

T +86 21 6157 5200
F +86 21 6157 5299

BOSTON
Prudential Tower
800 Boylston Street
Boston, MA 02199

T +1 617 951 7000
F +1 617 951 7050

SILICON VALLEY
1900 University Avenue
6th Floor
East Palo Alto, CA 94303

T +1 650 617 4000
F +1 650 617 4090

SEOUL
POSCO P&S Tower, 21F
134 Teheran-ro, Gangnam-gu
Seoul 06235

T +82 2 2141 5900
F +82 2 2141 5950

LONDON
60 Ludgate Hill
London EC4M 7AW

T +44 20 3201 1500
F +44 20 3201 1501

TOKYO
JP Tower 30F
2-7-2, Marunouchi
Chiyoda-ku, Tokyo 100-7030

T +81 3 6259 3500
F +81 3 6259 3501

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ropesgray.com

NEW YORK | WASHINGTON, D.C. | BOSTON | LONDON
CHICAGO | SAN FRANCISCO | SILICON VALLEY
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